IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 10521 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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INDRAJIT VALLABHBHAI PATEL - Petitioner(s)
Versus
V H SHAH & 2 - Respondent(s)

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Appearance :
MR GM JOSHI for Petitioner(s) : 1,
MR LR PUJARI, ASSTT.GOVERNMENT PLEADER for Respondent(s) : 1 - 2.
NOTICE SERVED BY DS for Respondent(s) : 3.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 12/04/2007

ORAL JUDGMENT

1. Shri G.M. Joshi, learned counsel for the petitioner; Shri L.R.Pujari, learned AGP for the

respondents no. 1 and 2.

2. Shri Joshi submits that the respondent no. 3 has expired and as the cause was personal against the respondent no.3 and the respondent no.3 having joined the appellate proceedings in his personal capacity, there is no need to substitute the legal representatives.

3. The short facts necessary for disposal of the present writ application are that the petitioner was an elected member of the Municipal Council of Anand Municipality. One Shri Yunus Vora filed an application before the Collector, Kheda purporting to be an application under Section 38 of the Gujarat Municipalities Act, 1963 seeking a declaration that the petitioner is not a citizen of India and as such, was not entitled to hold the office of a Councilor of Anand Municipality. The petitioner appeared before the Collector and submitted that in view of the provisions of Citizenship Act,1955 the Collector had no jurisdiction to interfere in the matter. However, the Collector held against the petitioner by order dated

19.3.96. The petitioner thereafter filed an appeal before the Director of Municipalities, who, in his turn, after hearing the parties and after recording certain findings in favour of the petitioner vide his order dated 16.10.96 set aside the order passed by the learned Collector and remanded the matter back to the Collector with a direction to pass order afresh in accordance with law. It is to be noted that the present respondent no. 3 Babubhai Girdharbhai Patel made an application before the Director of Municipalities for being heard as party and the said prayer was granted by the Director of Municipalities.

4. Being aggrieved by the order passed by the Director of Municipalities, the petitioner has filed the present Special Civil Application No. 10521 of 1996, while the respondent no.3 filed Special Civil Application No. 8538 of 1996. Shri Joshi submits that both the petitions were to be heard simultaneously, but in view of the death of the respondent no.3, his Special Civil Application No. 8538/96 stood dismissed.

5. Shri Joshi, learned counsel, after taking me through the order passed by the Director of Municipalities, submits that in view of the findings recorded by the said officer, there was no need to remand the matter and the appeal filed by the petitioner ought to have been allowed in toto.

6. Shri L.R.Pujari, learned AGP for the State on the other hand submits that if the petitioner appears before the Collector and raises his objection in view of the findings recorded by the learned Director of Municipalities, the petitioner is not going to suffer unnecessarily.

7. After hearing the parties and on going through the orders passed by the learned Director of Municipalities, I must hold that this Court is not required to interfere in the matter at this stage. The petitioner certainly can appear before the Collector and raise all objections available to him under the law and may also inform the Collector that the findings recorded by the Director of Municipalities in favour of the petitioner would bind the Collector.

8. For the reasons aforesaid, I find no reasons to interfere in the matter. The petition is disposed of. The petitioner shall appear before the Collector on 15th May, 2007 along with copy of this order enabling the Collector to note that what Collector is required to do in the matter. The Collector shall give appropriate opportunity of making representation and hearing to the petitioner and shall decide the matter finally, preferably within three months from the date of appearance of the petitioner. Rule is discharged. No costs. Interim relief, if any, is vacated.

[R.S. GAG, J.]

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